

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ELECTROLUX HOME PRODUCTS, INC.)	
)	
and)	Case 15-CA-206187
)	
J'VADA MASON, an Individual)	
)	

RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, Respondent, Electrolux Home Products, Inc. (Electrolux or Respondent), files the following exceptions to Administrative Law Judge Arthur J. Amchan's July 2, 2018 Decision. The specific grounds for these exceptions and citation of authorities are set forth in Respondent's supporting brief.

Exception 1: To the judge's finding that Charging Party, J'Vada Mason, was disciplined in 2013 for "improperly clocking in." (Decision, p. 2, line 15.)

Exception 2: To the judge rejecting Respondent's argument that the fact that Charging Party was treated the same as other employees with respect to an infraction in January 2017 dispels the inference that her termination several months later was discriminatorily motivated. (Decision, p. 2, fn. 1.)

Exception 3: To the judge crediting Charging Party's testimony about what occurred at an alleged meeting one week before the second election. (Decision, p. 3, fn. 2.)

Exception 4: To the judge's suggestion that on January 13, 2017, the Union identified for the first time six unit employees, including Charging Party, who would serve on its negotiating team in collective bargaining negotiations. (Decision, p. 3, lines 4-5.)

Exception 5: To the judge's conclusion that the Union and Respondent participated in a sidebar discussion concerning a complaint Charging Party had about her supervisor, John "Chris" Fair, in March or April 2017. (Decision, p. 3, lines 7-9.)

Exception 6: To the judge's find that "friction between Mason and Fair started almost from the beginning of [Fair's] employment." (Decision, p. 3, lines 11-12.)

Exception 7: To the judge's finding that the two forklift drivers who were out on FMLA on April 28, 2017, were assigned to assembly line 2. (Decision, p. 3, lines 33-35.)

Exception 8: To the judge's suggestion that former plant manager Sebastian Gulka should have been called as a witness by Respondent. (Decision, p. 3 fn. 2).

Exception 9: To the judge's finding that Fair only asked Charging Party to deliver microwaves to assembly line 2. (Decision, p. 4, line 1.)

Exception 10: To the judge finding relevant whether Fair told Charging Party to ask someone else to deliver the microwaves if she could not do so herself. (Decision, p. 4, fn. 6.)

Exception 11: To the judge's finding that Fair was insisting that Charging Party personally deliver the microwaves. (Decision, p. 4, fn. 6.)

Exception 12: To the judge's decision not to fully credit Fair's testimony. (Decision, p. 4, fn. 6.)

Exception 13: To the judge's finding that Fair's testimony and his statement suggest that he asked Charging Party to deliver microwaves to line 2 after he knew that they were being delivered by another employee. (Decision, p. 4, fn. 6.)

Exception 14: To the judge's conclusion that the only factual finding as to what occurred on April 28, 2017 is that Fair asked Charging Party to deliver microwaves to line 2 on at least one occasion and she did not do it. (Decision, p. 4, fn. 6.)

Exception 15: To the judge's finding that it is unclear what Supervisor Hamza Huqq has to do with the case (Decision, p. 4, fn. 7.)

Exception 16: To the judge's finding that it is unclear whether Huqq's reaction had anything to do with Fair's request that Charging Party deliver microwaves to line 2. (Decision, p. 4, fn. 7.)

Exception 17: To the judge finding any significance to the fact that Huqq did not know who the materials team lead for line 1 was and was unfamiliar with James Allen. (Decision, p. 4, fn. 7.)

Exception 18: To the judge's finding that Charging Party was not responsible for delivering materials to line 1 and Fair did not tell her to deliver materials to line 1. (Decision, p. 4, lines 5-6.)

Exception 19: To the judge's finding that production stopped for reasons unrelated to the delivery of microwaves to line 2 or anything that Charging Party did or did not do. (Decision, p. 4, lines 6-8.)

Exception 20: To the judge's finding that Huqq's testimony is inconsistent with Fair's testimony. (Decision, p. 4, fn. 8.)

Exception 21: To the judge's finding that it was obvious Huqq remembered very little of what occurred on April 28. (Decision, p. 4, fn. 8.)

Exception 22: To the judge's finding that Huqq's testimony has absolutely no probative value regarding any issues in this case. (Decision, p. 4, fn. 8.)

Exception 23: To the judge finding any significance to the fact that Charging Party was not informed of the consequences of her conduct during the investigation meeting on April 28. (Decision, p. 4, lines 16-17.)

Exception 24: To the judge’s finding that Jarrett prepared a “termination recommendation presumably on April 28.” (Decision, p. 4, lines 17-18.)

Exception 25: To the judge finding any significance to the fact that the termination recommendation form was not presented to Charging Party either before or after her termination on May 5. (Decision, p. 4, lines 19-20.)

Exception 26: To the judge finding any significance to the fact that Charging Party worked for approximately three hours on May 5, 2017, before she was informed of her termination. (Decision, p. 5, lines 12-16.)

Exception 27: To the judge speculating that Roberts did not know that Charging Party was being terminated until May 5, 2017. (Decision, p. 5, lines 19-20.)

Exception 28: To the judge’s assumption that if Roberts or Jarrett knew for certain before May 5 that Charging Party was going to be terminated, it is unlikely that Charging Party would have been allowed to work that day. (Decision, p. 5, lines 20-21.)

Exception 29: To the judge finding no credible evidence that Charging Party’s insubordination disrupted Respondent’s operations in any material way, and his suggestion that such evidence is necessary to find that Charging Party’s discharge was lawful. (Decision, p. 5, lines 23-27.)

Exception 30: To the judge’s finding that Jarrett’s testimony with regard to her conversation with Roberts is particularly incredible. (Decision, p. 5, lines 30-40, p. 6.)

Exception 31: To the judge’s finding that Jarrett’s testimony does not accurately reflect any conversation she had with Charging Party or Roberts. (Decision, p. 6, lines 4-5.)

Exception 32: To the judge’s finding that Charging Party was not responsible for supplying line 1 and Fair never asked her to supply line 1. (Decision, p. 6, lines 5-6.)

Exception 33: To the judge’s finding that Fair never told Jarrett that Charging Party was insubordinate with regard to line 1. (Decision, p. 6, lines 6-7.)

Exception 34: To the judge’s finding that Jarrett did not credibly explain in this proceeding or elsewhere why Charging Party’s misconduct warranted termination while the insubordination of other employees did not. (Decision, p. 6, lines 9-11.)

Exception 35: To the judge’s suggestion that Roberts testified that Jarrett’s report was vetted only by David Smith and Tim O’Rourke. (Decision, p. 6, lines 14-16.)

Exception 36: To the judge’s finding that any input from Smith regarding Charging Party’s termination did not constitute legal advice. (Decision, p. 6, lines 18-19.)

Exception 37: To the judge’s finding that it is not clear the “vetting by Pearson and/or O’Rourke constituted legal advice.” (Decision, p. 6, fn. 14.)

Exception 38: To the judge’s finding that there is no evidence regarding the review of Jarrett’s recommendation or any deliberations regarding her recommendations by Pearson, Smith, O’Rourke or anyone else.” (Decision, p. 6, lines 19-21.)

Exception 39: To the judge’s finding that there is no evidence as to whether Jarrett communicated with Pearson, O’Rourke or Smith after her meeting with Charging Party on April 28—other than to submit the statements she received from Fair. (Decision, p. 6, lines 23-25.)

Exception 40: To the judge’s finding that Jarrett testified she discussed the findings of her investigation with Roberts late in the day on April 28. (Decision, p. 6, lines 28-29.)

Exception 41: To the judge’s finding that it is unclear who made the final decision to terminate Charging Party and on what basis. (Decision, p. 6, lines 29-30.)

Exception 42: To the judge's finding that it appears from Paul Shaffer's uncontradicted testimony that a final decision to terminate Charging Party was not made until May 1 at the earliest and possibly as late as May 5. (Decision, p. 6, lines 30-32.)

Exception 43: To the judge's finding that Jarrett's testimony that Charging Party was terminated because she disrupted Respondent's operation is not credible. (Decision, p. 6, lines 34-35.)

Exception 44: To the judge's suggestion that Charging Party's conduct did not warrant termination because it did not actually disrupt production. (Decision, p. 6, lines 34-39.)

Exception 45: To the judge's finding that the fact that Respondent waited a week after the insubordination to terminate Charging Party is an indication that it did not consider her misconduct to be particularly serious. (Decision, p. 6, lines 18-19.)

Exception 46: To the judge's finding that the fact that Respondent waited a week after the insubordination to terminate Charging Party is an indication that Respondent did not distinguish Charging Party's case from other employees guilty of similar misconduct on the grounds that she was a team leader. (Decision, p. 6, lines 39-43.)

Exception 47: To the judge's finding that there is no evidence Respondent terminated Charging Party as a result of its progressive discipline policy, and his suggestion that any failure to follow a progressive discipline policy is relevant. (Decision, p. 7, lines 4-13.)

Exception 48: To the judge's conclusion that the fact that Respondent has not taken disciplinary action against other employee-members of the Union's negotiating committee is irrelevant to the issue of whether it discriminated against Charging Party. (Decision, p. 7, fn. 16.)

Exception 49: To the judge’s finding that General Counsel Exhibits 13-19 demonstrate that Charging Party was treated disparately. (Decision, p. 7, lines 16-34, p. 8, lines 1-44, p. 9, lines 1-8.)

Exception 50: To the judge’s reliance on the settlement agreement introduced as General Counsel Exhibit 3. (Decision, p. 8, fn. 17.)

Exception 51: To the judge’s finding that Respondent has not established that it terminated an employee, who was not a union activist, for a first instance of insubordination. (Decision, p. 9, lines 6-8.)

Exception 52: To the judge’s finding that the fact that Charging Party was a team lead is irrelevant to the issue of disparate treatment because Respondent did not articulate this as a basis for treating Charging Party more harshly than other employees. (Decision, p. 9, fn. 18.)

Exception 53: To the judge’s description of the *Wright Line* test for establishing unlawful motivation. (Decision, p. 9, lines 12-29.)

Exception 54: To the judge’s conclusion that Respondent “was aware of Mason’s participation on the union committee.” (Decision, p. 9, lines 32-33.)

Exception 55: To the judge’s suggestion that Charging Party was first identified to Respondent as a member of the Union’s negotiating committee in January 2017. (Decision, p. 9, lines 33-34.)

Exception 56: To the judge’s finding that “Respondent’s management was aware of Mason’s attempt to contradict plant manager Gulka at a mandatory employee meeting just prior to the second election.” (Decision, p. 9, lines 35-37.)

Exception 57: To the judge finding any significance to the fact that Pearson, O'Rourke, and/or Smith were aware of Charging Party's presence at collective bargaining negotiations. (Decision, p. 9, lines 39-41, p. 10, line 1.)

Exception 58: To the judge's conclusion that Jarrett and Roberts were aware of Charging Party's union activities "in part due to Respondent's failure to give any credible explanation for the disparate treatment of Mason as compared with other insubordinate employees." (Decision, p. 10, lines 4-7.)

Exception 59: To the judge's finding that Jarrett and Roberts were "both likely aware of Mason's union activities through Erika Robey, then Respondent's labor relations manager at the Memphis plant." (Decision, p. 10, lines 11-12.)

Exception 60: To the judge's findings and conclusions regarding Robey's presumed involvement in Charging Party's discharge. (Decision, p. 10, lines 15-23.)

Exception 61: To the judge's conclusion that Charging Party's uncontradicted testimony establishes that Respondent harbored animus to at least some of her union activities. (Decision, p. 10, lines 27-29.)

Exception 62: To the judge's inference of animus from "Respondent's inability to explain why she was terminated and other employees guilty of insubordination were not." (Decision, p. 10, lines 29-31.)

Exception 63: To the judge's finding that the reason for Charging Party's discharge is pretextual. (Decision, p. 11, lines 5-7.)

Exception 64: To the judge's inference of discriminatory motive. (Decision, p. 11, line 10.)

Exception 65: To the judge's conclusion that Respondent seized upon Charging Party's misconduct to retaliate against her because of her union activity. (Decision, p. 11, lines 10-12.)

Exception 66: To the judge's conclusion that Respondent violated Section 8(a)(3) and (1) in discharging Charging Party on May 5, 2017. (Decision, p. 11, lines 26-27.)

Exception 67: To the judge's stated remedies. (Decision, p. 11, lines 29-47, p. 12, lines 1-3.)

Exception 68: To the judge's recommended order. (Decision, p. 12, lines 10-43, p. 13, lines 2-27.)

Respectfully submitted,

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July 30, 2018

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CERTIFICATE OF SERVICE

It is hereby certified that Respondent's Exceptions to Administrative Law Judge's Decision
in the above-captioned case has been served on the following by e-mail on the date set forth below:

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July 30, 2018